RIGHT TO STRIKE OF TRADE UNIONS: COMPARATIVE ANALYSIS INTERNATIONALLY VERSUS INDIA

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ABSTRACT

Strikes from beginning of times, has been a silver lining for society to use it as a weapon to voice their concerns to the higher authorities when their needs are not being taken care of. Till date, in democratic countries this mechanism has been recognised by the nations as a right of people & therefore also made sure that there is a procedure to do strikes yet some countries in fear of it being used as a weapon of direction of public peace, have curtailed it with restrictions.

The aim of the present research article is to examine the law related to right to strike of the trade unions and what India can learn from other countries with regards to labour laws.

Key Words: Labor laws, Strike, Collective Bargaining, Trade Unions Activities, Germany, Republic of Gana, Turkey, Poland, Australia, United States, Ireland, Conclusions & Solutions.

INTRODUCTION

"A Nation should not be judged by how it treats its highest citizens, but it's lowest ones."

- Nelson Mandela, Long Walk to Freedom.

The Universal Declaration of Human Rights 1948 recognised right to strike which made it universal recognition thereby then International Labour Office working towards protection of workers' rights though it is unfortunate that there is only implicit mention of it in the Convention & not explicit.[79] Even European Social Charter of 1961 recognised right to strike.[80]

Recently, the Global Rights Index in its report measured the freedom of free speech & expression & workers' rights in which it noted that worst countries for workers' rights are Brazil, Bangladesh, Pakistan, India, Egypt, Colombia, Philippines, Kazakhstan, Turkey, & Zimbabwe. India was ranked at fourth position out of those 10 worst countries for workers' rights[81] while the best countries were mostly European countries along with Norway, Uruguay & Iceland.[82] As per the report comparing the world, the most violated rights of workers are:

1. Right to Civil liberties;
2. Right to Trade Union Activities;
3. Right to Strike;
4. Right to Collective Bargaining; &
5. Right to establish or join unions.[83]

Interestingly, one must ponder for he countries who performed well on workers' rights in the world. Population of Asian countries is more than other countries in the world let alone of India. Hence, is it due to population mismanagement that workers' rights are being neglected due to poor implementation of policies & listening to unlimited demands or is it due to law formed for right to strike not properly formed in interest of workers or is it not both but the higher authority's resistance to bow down to workers' demands to uphold their ego for being always right even when practically workers are suffering due to their needs not fulfilled more so in the times of global

[79] Mr Giovanni, *The right to strike in essential services: economic implications,* Committee on Economic Affairs & Development, May 11th 2005 available at https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10894&lang=EN
[80] Id
[81] Sharan Burrow, 2020 ITUC *Global Rights Index,* International Trade Union Confederation, Brussels, Belgium, (2020) available at https://www.ituc-csi.org/IMG/pdf/ituc_globalrightsindex_2020_en.pdf.
[82] Paulien Osse ,*Labour Rights Index 2020,* Wage Indicator, (2020) available at https://labourrightsindex.org/about-us/the-index-in-text-explanation#key-findings.
[83] *Ibid.*

pandemic. This paper, therefore tries to do comparative analyses of the other jurisdictions compared to India for right to strike & various statutes thereof.

PART I – JURISPRUDENCE OF RIGHT TO STRIKE IN INDIA

"Man's inhumanity to man makes countless thousands mourn."

\- Robert Burns

- **Current View -**

Section 2(zk)[84] of the Industrial Relations Code 2020 (IR code) has defined strike while section 2(zl)[85] define trade union. Criticisms for IR code 2020 has been due to the reason that restrictions on right to strike placed in IDA, 1947 was only in respect of public utility services but now it is for every establishment.[86] Further in the case of **B.R. Singh v. Union of India[87],** the Hon'ble Supreme Court had maintained that, "*Right to strike is an important weapon in the armoury of workers and indicated that the bargaining power of trade unions would be considerably reduced if they are not permitted to demonstrate and resort to strikes. Restricts on the right to strike impair unions from functioning effectively to protect and defend the interests of their members."* Therefore, the crux of the concern is should mandatory requirement of notice to employer be there as provided under section 62(1)[88] of the IR Code or it is unfair on workers right in light of freedom of free speech & expression as enshrined under Article 19(1) of the Indian Constitution, 1950? The question is essential because this has violated the International Labour Organization's principle of freedom of association.[89] Section 86[90] of the IR Code provides for illegal strikes punishment but the ILO has advised not to impose such penalties for strikes that are justified but interestingly if notice is not given the strike becomes illegal therefore it is a coercive and undue influence on the part of employer being on a dominant position to be able to indirectly control employees even when they are frustrated and want to go on strike. Further as per definition of strike even if the workers absent themselves from work such as boycott that too is wrong such as casual leave which means without understanding the employers are entitled to cut their wages. Though

[84] (zk) "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment and includes the concerted casual leave on a given day by fifty per cent. or more workers employed in an industry;

[85] (zl) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions

[86] K. Venkataramanan, *What does the new Industrial Relations Code say, & how does it affect the right to strike?,* The Hindu, 27th September, 2020 available at https://www.thehindu.com/news/national/the-hindu-explains-what-does-the-new-industrial-relations-code-say-and-how-does-it-affect-the-right-to-strike/article32705599.ece.

[87] B.R. Singh v. Union of India, (1989) 4 SCC 710.

[88] 62. (1) No person employed in an industrial establishment shall go on strike, in breach of contract— (a) without giving to the employer notice of strike, as hereinafter provided, within sixty days before striking; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of strike specified in any such notice; or (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or (e) during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and sixty days, after the conclusion of such proceedings; or (f) during the pendency of arbitration proceedings before an arbitrator and sixty days after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 42; or (g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. (2) No employer of an industrial establishment shall lock-out any of his workers— (a) without giving them notice of lock-out as hereinafter provided, within sixty days before locking-out; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or (e) during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and sixty days, after the conclusion of such proceedings; or (f) during the pendency of arbitration proceedings before an arbitrator and sixty days after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 42; or (g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

[89] Lee Swepston, *Human rights law & Freedom of association: Development through ILO supervision,* 137 I.L.R., (1998) available at http://www.ilo.int/public/english/revue/download/pdf/swepston.pdf.

[90] (13) Any worker who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Code, shall be punishable with fine which shall not be less than one thousand rupees, but which may extend up to ten thousand rupees or with imprisonment for a term which may extend to one month, or with both.
(14) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Code, shall be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to one lakh rupees or with imprisonment for a term which may extend to one month, or with both. (15) Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Code, shall be punishable with fine which shall not be less than ten thousand rupees, but which may extend to fifty thousand rupees or with imprisonment for a term which may extend to one month, or with both. (16) Any person who knowingly spends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with fine which shall not be less than ten thousand rupees, but which may extend to fifty thousand rupees or with imprisonment for a term which may extend to one month, or with both.

section 93[91] of the IR Code protects such persons from being expelled from the organisation for their taking part in the strike.

In **T.K. Rangarajan v. Government of Tamil Nadu[92],** it was held that under labour law, strike is a weapon in the hands of the workmen and lockout is a weapon in the hands of the management, to strike a balance. But in service law, Government servants have no right to strike.

In the case of **Harish Uppal v. Union of India[93],** the Hon'ble Supreme Court has rightly held that right to strike is not there for lawyers yet they can put forth their grievances by the medium of interviews on television & through doing peaceful protest far away from the premises of the courts. The Hon'ble Court analysed the Bar Council of India (Conduct and Disciplinary) Rules with Advocates act, 1961 with maintain that these imply there is bar on lawyers to strike.

- **Current Judicial Attitude on right to strike**

In the case of **Shongtong Karcham Hydel Project Workers' Union v. State of Himachal Pradesh & Others[94],** the Management did not pay salary to their workers within stipulated time nor any further meeting on this was made, the workers proceeded with strike. Even after the workers made representations it was of no avail so they filed they writ petition. Respondents claimed that petition was not maintainable as it was illegal strike. The Court held that strike should not be illegal and it shall be peaceful and in the present case the meeting was fixed about demands but workers went on strike anyways which is illegal. Further members on strike instigated other workers to join them for strike and damage property therefore the strike was illegal and unjustified.

In the case of **Mr Jayant Bhagwantrao Satam & Others v. State of Maharashtra & Others[95], t**he employees wanted a revision in their pay-scale in the terms of recommendations of Pay Commission. But the Employer initiated conciliation proceedings under section 12(1). The Petitioners filed PIL seeking to declare the strike by employees as illegal. The Court held that due to strike life of rural people was at stake and even if workers felt injustice they had to follow procedure of negotiations before resorting to strike. Hence, held the strike as illegal.

In the case of **Gujurat Steel Tubes Ltd. v. Gujurat Steel[96],** the Himacheal Pradesh High Court held that only if the strike is peaceful can it be legally valid against the employers leaving no scope for any sort of violence such as not using any bad words, acts being without violence.

In the case of **Ishwar Shandilya v. State of Uttrakhand[97], 2019**, an interesting question came up before the Hon'ble Uttarakhand High Court which were related to if the advocates can strike or boycott the court would it fall under misconduct on their part. The Hon'ble court held for the that interpreting Article 19(1)(g) of the Constitution, the lawyers cannot hold from appearing in the court for their client's case on the stance of their strike which would ultimately clash with the speedy justice & "administration of Justice." The Court out rightly observed that it is a danger to the existing Justice system if the officer of the court instead of assisting the court flees away in the name of strike without permission of the Chief Justice moreover, no law declaring that lawyers cannot strike is no means of way for them to disobey their duties.

[91] 93. (1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Code shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any Trade Union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the Union or society, anything to the contrary in rules of a Trade Union or society notwithstanding.

[92] T.K. Rangarajan v. Government of Tamil Nadu, AIR 2003 SC 3032

[93] Harish Uppal v. Union of India, AIR 2003 SC 739.

[94] Shongtong Karcham Hydel Project Workers' Union v. State of Himachal Pradesh & Others, LNIND 2016 HP 1955.

[95] Mr Jayant Bhagwantrao Satam & Others v. State of Maharashtra & Others, (2017) 4 LLJ 740.

[96] Gujurat Steel Tubes Ltd. v. Gujurat Steel, 2018(1) LLN 709 (DB) (HP).

[97] Ishwar Shandilya v. State of Uttrakhand, 2019 SCC OnLine Utt 976.

In the case of **Hindustan Aeronautics Employees v. Hindustan Aeronatics Ltd[98], 2019,** the appellant is Trade Unions who have approached the court against the respondents who has sought the relief of permanent injunction against Trade Unions from being able to picket, demonstrate, hold dharna or shout slogans within 500-meter radius of the main gates. Hence, the case involves industrial dispute and the employers trying to put an end to act of strike in trial court for which the appellants approached the Hon'ble High Court. The Karnataka High Court rightly held that Article 19(1) of the Constitution saves the right of workmen to hold strike for their cause & their interests need protection therefore any order of injunction is wrong to ruin their right to strike also since the notice was withdrawn by the workmen. Court also clarified that no one can instruct the workmen as to which place they shall hold their dharna, or demonstration.

In the case of **G. Balagopalan v. State of Kerala[99], 2021,** the fact of the matter is that the petitioner, a director of police who has retired, filed this petition in the Kerala High Court against the "abuse of powers" by the respondents i.e. State of Kerala. The reason is that there was a general strike and the government employees and the teachers were allowed a "eligible leave with salary for two days" in the days in which they would taken part in the strike against the policy of the Central regime. But the fact of the issue is that without availing leave they took part in the "National General Strike" yet received full months payment. The court rightfully held that in this particular case the matter cannot be termed as "pure service matter," even if the State regimes notification did in a way protect the workers interest who were deemed to be servant of the Government taking into account that government servants are banned from strike right yet can form association under Article 19 of the Constitution yet they cannot call for any "general strike."

[98]Hindustan Aeronautics Employees v. Hindustan Aeronatics, Miscellanious First Appeal No. 1601 of 2019 (CPC) available at https://indiankanoon.org/docfragment/193106535/?formInput=right%20to%20strike

[99] G. Balagopalan v. State of Kerala,

PART II – INTERNATINALLY (1000 WORDS)

"Change is one thing. Acceptance is another. You should be cautious."

- Arundati Roy, The God Of Small Things, (1997).

- **GERMANY**

Through the National law the civil servants are prohibited from right to strike in Germany. [100] Article 9 of the German Constitution envisages about the "double fundamental right" [101] It is not fixed under Article 9 that if it is individual right of workers in Trade Unions or it is collective right. Ballot is a system that has to be adhered to before strike if called by the Trade Unions in Germany as per which strike action by the Trade Union can only be initiated if there are 75 percent votes of the members to go on strike. [102] This generally means that if the ballot procedure is not followed then the strike automatically becomes illegal & unlawful. [103] In Germany, there are obligations to be fulfilled before ballot i.e. "peace obligations," because if such is not followed then the strike becomes illegal. [104] Arbitration which has become mandatory in Germany is necessary before strike action by the Union. Further, is he Unions who have to financially aid the "strikers," by paying them 2/3rds of the salaries which could be withheld due to strike[105]

[100] Matthias Jacobs & Mehrdad Payandeh, *The Ban on Strike Action by Career Civil Servants under the German Basic Law: How the Federal Constitutional Court Constitutionally Immunized the German Legal Order Against the European Convention on Human Rights*, 21 GERMAN LAW JOURNAL , 223-239 (2020) available at https://www.cambridge.org/core/journals/german-law-journal/article/ban-on-strike-action-by-career-civil-servants-under-the-german-basic-law-how-the-federal-constitutional-court-constitutionally-immunized-the-german-legal-order-against-the-european-convention-on-human-rights/93F07BE7B5F3334A0E9E1D86EBFF5C4E.

[101] The Right to Stike in the Public Sector, European Public Service Union, Germany, 2019 available at https://www.epsu.org/sites/default/files/article/files/Germany%20-%20Right%20to%20strike%20in%20the%20public%20sector%20-%20EPSU%20format%20%2BSC.pdf.

[102] John Moylan & Howard Mustoe, *Strike Changes: What do they mean?.*, BCC News, September 14th 2015 available at https://www.bbc.com/news/business-32870930.

[103] *Id.*

[104] Wiebke Warneck, *Strike rules in the EUE 27 & Beyond A comparative overview,* European Trade Union Institute, (2007) available at https://www.etui.org/sites/default/files/Strike%20rules%20in%20the%20EU27.pdf.

[105] Ms Ramanauskaite & Mr. De Buyer, *Right to Strike in Essential Services: Economic Implications,* Committee on Economic Affairs &

- **REPUBLIC OF GANA**

The Republic of Gana has Labour Act of Ghana, 2003 to deal with the provisions relating to strike actions wherein it is encouraged that negotiation & settlement to be done by the parties as per their "agreed methods," before they unravel the last option which is strike action. [106] Mediation & arbitration are two ways through which the Ghanaian National Labour Commission also comes between the parties to resolve their disputes to settle the issues. [107] Even if all these process are utilised and yet the issues are pending or not resolved then either party can produce notice to other party for communicating its wish to go on strike as per Section 159.[108] However, right to strike action is valid only if prior to acting there is seven days' notice given to the employer which has to expire as per Section 160 of the Act.[109] Interestingly, right to strike of essential services are banned.[110] One protection provided to strikers is protection against dismissal & new hiring to replace strikers.[111]

- **TURKEY**

Restrictive nature of right for strike is prevalent in Turkey such that majority needs to vote towards the strike action only then it can be done otherwise it cannot be which means otherwise it becomes illegal.[112] This ballot procedure is done through submitting the votes to the "highest local civil authority."[113] Such ballot action has to be done within 6 days that to they shall be working days before that written request has to be done which does not need to be done within working hours. [114] In 'essential services,' ban is there for water supply workers, banking workers, educational & training institutions & cemeteries.[115] Yet, the strikers are guarded against replacement from their services when they strike, however, only when services are essential for public needs are they replaced by other persons for fulfilling society's needs.[116] Moreover, it is important to highlight that the "temporary agency workers" is also not there or is "prohibited," by Turkey.[117] There is a mechanism for arbitration for settlement of the disputes though state cannot impose it on the parties itself.[118]

- **POLAND**

Ballot procedure is present in Poland, however, the matter is kept as "internal," one yet in the procedure there has to be 50 percent majority of the members of the Union who vote for strike action only then can strike be performed.[119] Further, five days' prior a notice has to be issued to the other party about the strike.[120] It is, however, essential to point out that while ballot procedure is kept internal matter, participation in strike action means for those persons to get suspended from their employment contract.[121] In strike action, an employee can be sued for "intentionally caused damage," only not otherwise. Arbitration Committee is set up explicitly to look after the

Development, May 11th 2005 available at https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10894&lang=EN.

[106] Paa Kwesi Hagan, *Employment & Labour law in Ghana,* Lexology, March 07th 2019 available at https://www.lexology.com/library/detail.aspx?g=fed577b0-4e8a-4d71-b3b4-74fc89702f46.

[107] *Id.*

[108] The Labour Act, 2003.

[109] *Id.*

[110] Background document for the Tripartite Meeting on the Freedom of Association & Protection of the Right to Organise Convention, 1948 in relation to the right to strike & the modalities & practises of strike action at national level, International Labour Office, Geneva, (2015) available at https://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/international_labour_standards/EN/_2015-02-10__C-029_Tripartite_Meeting_on_the_Right_to_Strike_ILO_Background_Document.pdf.

[111] *Id.*

[112] Findings of the IOE: Member Country Survey on Strike Action, The Global Voice of Business, (2017) available at https://www.ioeemp.org/fileadmin/ioe_documents/publications/Policy%20Areas/international_industrial_relations/EN/_201801XX_C921_ANNEX_Findings_of_the_IOE_Member_Country_Survey_on_Strike_Action.pdf.

[113] *Id.*

[114] *Id.*

[115] Oates, Andrea. "The Right to Strike in the Public Sector in Europe." *International Union Rights*, vol. 26, no. 1, 2019, pp. 3–5. *JSTOR*, www.jstor.org/stable/10.14213/inteuniorigh.26.1.0003. Accessed 1 June 2021.

[116] *Id.*

[117] *Id.*

[118] Tankut Centel, *Labour Dispute Resolution in Turkey,* Springer, (2019) available at https://link.springer.com/content/pdf/bfm%3A978-3-030-28215-8%2F1.pdf.

[119] Andrej Marian Swiatkowski, *Stike Restriction in Contemporary Polish Labour Law,* Hungarian Labour Law Journal, (2018) available at http://hllj.hu/letolt/2018_1_a/A_04_Swiatkowski_hllj_2018_1.pdf.

[120] *Id.*

[121] Michal Sewerynski, *Codification of collective labor law: the Polish experiment,* University of Lodz, December (2013) available at https://www.elsevier.es/es-revista-revista-latinoamericana-derecho-social-89-articulo-collective-labour-law-codification-polish-S1870467013719845.

strike is not done and there is settlement attempt before that last resort.[122]

- **AUSTRALIA**

Ballot procedure is followed in Australia under which there is a requirement of at least 50 percent votes of the members of the trade union before strike action is resorted towards.[123] If illegal industrial strikes are done, then damages are asked from the trade unions and the employees so engaged & can also suspend on three grounds firstly, if either party engages in cooling off period, secondly can terminate or suspend industrial action if any harm is caused to the other party, & thirdly, if any threat is caused to 'life, personal safety or health.'[124] There is "compulsory arbitration," procedure mandatorily followed by Australia to make disputes settled before strike is taken if settlement not reached even then.[125]

- **UNITED STATES**

It is shocking that one of the most liberal known country has stringent laws trying to murder the right of workers "free will," to raise their voice with mask of democracy to the world but at real face doing what even the most countries are not imaging to do i.e. conquer workers to not be able to go on strike at all through such rough laws. In the United States, not all but most of the agreements on bargaining have "no-strike clauses," which bans the work stoppage while such contract is in function even for those areas not mentioned in the contract itself which is interesting because it means workers plea cannot be heard at all which is against Justice principle i.e. hear the other side.[126] Not only that, if the contract is not fulfilled then the labour organisations are entitled to approach courts to sue the employees for their breach of contract duties.[127] Moreover, federal employees have no right to strike[128] while most states ban strike action yet anyone who engages in legal strike are given protection by the employer & if the employers does not give protection yet tries to harm the employees right then he/she are liable under unfair labour practises as per the National Labour Relations Act.[129]

- **IRELAND**

In Ireland, there is a concept of a secret ballot.[130] Majority if goes for strike, it is non-binding on the leaders of the trade unions.[131] Except Defence Forces right to strike is not "restricted by law," in Ireland.[132] Further, there is no need for employers to hire new workers to substitute who are on strike.[133] To determine the fairness of dismissal, conduct of employee & employer is checked when an employee is dismissed from services because he/she took part in right to strike action.[134] Labour Relations Commission is appointed for settlement of disputes & there is no concept of arbitration to resolve the issues between the parties.[135]

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[122] *Id.*

[123] Alice Orchiston; Breen Creighton; Catrina Denvir; Richard Johnstone & Shae Maccrystal, *Pre-Strike Ballots & Enterprise Bargaining Dynamics: An Empirical Analysis,* Melbourne University Law Review, (2018) available at https://law.unimelb.edu.au/__data/assets/pdf_file/0012/3066879/NEW-Orchiston-et-al-422-Advance.pdf.

[124] Shae McCrystal, *Why is it so hard to take lawful strike action in Australia,* The University of Sydney, Australia, (2019) available at https://journals.sagepub.com/doi/pdf/10.1177/0022185618806949.

[125] Richard Mitchell & Richard Naughton, *Australian Compulsory Arbitration: Will it Survive into the Twenty-First Century,* 31 Osgoode Hall Law Journal, 265-295, (1993).

[126] Morrison Handsaker & Marjorie L. Handsaker, *Remedies & Penalties for Wildcat Strikes: How Arbitrators & Federal Courts have ruled,* 22 Cath. U. L. Rev 279 (1973) available at https://scholarship.law.edu/cgi/viewcontent.cgi?article=2629&context=lawreview.

[127] *Id.*

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[130] Seamus Given & Sarah Grace, *Ireland: Industrial Action & The Law,* Mondaq, May 21st 2014 available at https://www.mondaq.com/ireland/employee-rights-labour-relations/315370/industrial-action-and-the-law.

[131] Section 14 of the Industrial Relations Act, 1990, Ireland.

[132] Marie O' Halloran, *Defence Forces treated differently because they cannot strike, Howlin says,* The Irish Times, July 04th 2019 available at https://www.irishtimes.com/news/politics/oireachtas/defence-forces-treated-differently-because-they-cannot-strike-howlin-says-1.3946814.

[133] Dr Bernd Waas, *Strike as a Fundamental Right of the Workers & Its Risks of Conflicting with other Fundamental Rights of the Citizens,* World Congress Santiago, September (2012) available at https://islssl.org/wp-content/uploads/2013/01/Strike-Waas.pdf.

[134] *Id.*

[135] Section 24 of the Industrial Relations Act, 1990.

PART IV – CONCLUSION & SUGGESTIONS

"If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time."

- **Abraham Lincoln.**

Right to strike is an essential fundamental human right for every individual. Through the present arguments the take away is that though in India Constitution does not directly guarantee right to strike yet it is through the Judge made law recognised as a legal right that is present in this democracy for the people to put forth their demands when they feel ignored or oppressed due to employers. The case laws presented highlight the confusion and difficulty for even the Judges to appreciate if strikes can be called legal by lawyers or illegal strikes done by trade unions because Judges interpret the statutes which is clearly prohibiting any such right if the strike is declared illegal by the employer and for lawyers there is a bar as per the Hon'ble Supreme Court, however, the present paper highlighted that it is no more a collective agreement for strike but it is a human right that every person individually should be entitled to invoke for whenever he/she feels injustice even in the Bar Council such right should be given recognition for no profession shall be ignored of such human right because employees of any profession might feel demands are not met, therefore, there should be procedure made but that procedure should not be such that it puts more limitations then aids in the process of strike.

After analysing the issues, some solutions recommended are:

1. That the burden of proof shall be put to the Employers to show cause as to why the demands of the labour are not met with, their grounds for not listening to them instead of just pleading for illegality of strike.
2. That to avoid such things, there shall be communication between the trade unions and the employers every week for their demands being fulfilled and their difficulties that can be looked into such as wage raise etc. then reasons can be provided by the employers to them to wait or if the apprehensions are vague etc.

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